

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Walla Walla District

FILE NUMBER: 2005-2100186

REGULATORY PROJECT MANAGER: Greg Martinez **Date:** 4-10-07

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** N **Date:** _____
At the project site (Y/N) Y **Date:** 1-18-06

PROJECT LOCATION INFORMATION:

State: Idaho

County: Boise

Center coordinates of site by latitude & longitudinal coordinates: 4880700/582700

Approximate size of site/property (including uplands & in acres): 200 acres

Name of waterway or watershed: South Fork Payette River

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands				X(9.0 ac)					
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary X Or Approved _____

ADDITIONAL INFORMATION SUPPORTING NJD: Wetland sites PSS1D-1, PEM1A-1, PEMIA-2, PEM1A-3, PSS1A-2, PEM1C-2 and PEM1C-3 met all three parameters under the 1987 wetland delineation manual but are not jurisdictional because they are isolated, non-navigable intrastate waters with no nexus to interstate commerce. They are depressional areas located on the first and second benches above the South Fork Payette River supported by ephemeral surface runoff primarily from snow melt. They have no other secondary sources of water such as irrigation water. They have no apparent surface water connection to and do not flow into any other water of the United States. In addition, they are not subject to boating. Migratory birds such as sandhill cranes have been observed using these wetlands. However, there is no other evidence of their use in interstate or foreign commerce. Based on *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (531 U.S. 159 (2001)), isolated, non-navigable intrastate waters are not jurisdictional under the Clean Water Act if the sole interstate commerce nexus is the use of such waters by migratory birds or other factors in the Migratory Bird Rule.